

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

IN RE:) BANKRUPTCY CASE
)
MAGALIS M. DAVILA,) NO.: 19-36111
)
Debtor.) CHAPTER 13
)
) JUDGE: DONALD R. CASSLING
)

NOTICE OF MOTION

TO: SEE ATTACHED ADDRESSES

PLEASE TAKE NOTICE THAT ON March 12, 2020 at 9:30 am, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Donald R. Cassling, U.S. Bankruptcy Judge, 219 S. Dearborn St., Room 619, Chicago, Illinois 60604, and shall then and there present the attached Motion and at which time you may appear if you so desire.

CERTIFICATION

I, the undersigned Attorney, Certify that I served a copy of this Notice to the Addresses attached by electronic notice through ECF or by depositing the same at the U.S. Mail at 1 North Dearborn, Chicago, Illinois 60602 at 5:00 P.M. on March 4, 2020, with proper postage prepaid.

McCalla Raymer Leibert
Pierce, LLC

/s/ Dana O'Brien

Dana O'Brien
ARDC# 6256415
1 N. Dearborn Suite 1200
Chicago, IL 60602 (312)
346-9088

This is an attempt to collect a debt and any information obtained will be used for that purpose.

NOTICE OF MOTION ADDRESSES

To Trustee:
Tom Vaughn
55 E. Monroe Street, Suite 3850
Chicago, IL 60603

by Electronic Notice through ECF

To Debtor:
Magalis M. Davila
7436 S. Octavia
Bridgeview, IL 60455

Served via U.S. Mail

To Attorney:
David M Siegel
David M. Siegel & Associates
790 Chaddick Drive
Wheeling, IL 60090

by Electronic Notice through ECF

McCalla Raymer Leibert Pierce, LLC
Attorney For: Creditor
1 N. Dearborn Suite 1200
Chicago, IL 60602
(312) 346-9088

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MOTION TO MODIFY THE AUTOMATIC STAY

NOW COMES Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Pretium Mortgage Acquisition Trust by and through its attorneys, McCalla Raymer Leibert Pierce, LLC, and requests that the Automatic Stay heretofore entered on the property located at 7436 S. Octavia, Bridgeview, Illinois 60455 be Modified stating as follows:

1. On December 23, 2019, the above captioned Chapter 13 was filed.
2. The above captioned Chapter 13 has not been confirmed.
3. The property located at 7436 S Octavia Ave, Bridgeview, Illinois 60455 was sold at the published foreclosure sale on September 6, 2016.
4. The Order Approving Sale was not entered.
5. Pursuant to U.S.C Section 1322 (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law”...

6. The property located at 7436 S Octavia Ave, Bridgeview, Illinois 60455 is not a part of this bankruptcy estate and the Debtor has no right to cure any defaults to WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE ACQUISITION TRUST. Colon v. Option Mortgage Corp., 319 F.3d 912 (7th Cir. 2003).
7. WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE ACQUISITION TRUST continues to be injured each day it remains bound by the Automatic Stay.
8. No cause exists to delay the enforcement and implementation of relief and Bankruptcy Rule 4001(A)(3) should be waived.

WHEREFORE, YOUR MOVANT respectfully prays that the Automatic Stay on the property located at 7436 S. Octavia, Bridgeview, Illinois 60455, be modified and that Bankruptcy Rule 4001(a)(3) be waived as not applicable, and leave be granted to WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE ACQUISITION TRUST to proceed with nonbankruptcy remedies including foreclosure, and for such other and further relief as this Honorable Court deems just.

McCalla Raymer Leibert Pierce, LLC

By: /s/Dana O'Brien
Dana O'Brien
Illinois Bar No. 6256415
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